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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/379,492 08/23/99 BURT

P REF/BURT/392

QM02/0613

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EXAMINER

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ART UNIT

PAPER NUMBER

3754

DATE MAILED:

06/13/00

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UNITED STATES DEPARTMENT OF COMMERCE  
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 11

Application Number: 09/379,492

Filing Date: 8/23/99

Appellant(s): BURT

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Richard E. Fichter  
For Appellant

**EXAMINER'S ANSWER**

This is in response to appellant's brief on appeal filed 5/22/00.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

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The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows: The Statutory Double Patent-35 U.S.C. 101 and Obviousness -type Double Patenting Rejection have been overcome.

**(7) *Grouping of Claims***

Appellant's brief includes a statement that claims 20-36 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

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**(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

4,919,312	Beard et al	4-1990
4,749,437	Welter	6-19 <sup>8</sup> 8
4,341,330	Mascia et al.	7-1982
3,622,053	Ryden	11-1976 <del>12-1969</del>

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20-21, 23, 25, 27-29, 31, and 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beard et al. in view of Welter.

Beard et al. shows an aerosol dispenser comprising a body 12, a closure 11, cylindrical flanges 2-3 and means for dispensing 29. Beard et al. lack the closure ultrasonically welded to the body. Welter shows two pieces welded ultrasonically to each other to assure a uniform

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distribution of amplitude of vibration and a resultant uniform bond (see column 1, lines 43-48). It would have been obvious to one of ordinary skill in the art to have modified the Beard et al. closure ultrasonically welded to the body as taught by Welter to assure a uniform distribution of amplitude of vibration and a resultant uniform bond.

Claims 22, 24, 30, 32 and 36 are rejected under 35 U.S.C. § 103 as being unpatentable over Beard et al. in view of Welter as applied to claims 20 and 35 above, and further in view of Mascia et al.

Beard et al. lack the flanges flat. Mascia et al. show a closure 16 and body 12 having flat flanges which are rolled and crimped together. It would have been obvious to one of ordinary skill in the art to have substituted the Beard et al. cylindrical flanges with flat flanges which are rolled and crimped together as taught by Mascia et al. as an alternative equivalent means for attaching a close to the body of an aerosol dispenser.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beard et al. In view of Beard et al as applied to claim 20 above, and further in view of Ryden.

Beard et al lacks the aerosol dispenser an inhaler. Ryden shows an aerosol dispenser an inhaler containing medicaments to deliver prompt response to patients ( see column 1, lines 9-18). It would have been obvious to one of ordinary skill in the art to have modified the Beard et al aerosol dispenser with an inhaler containing a medicament as taught by Ryden to deliver prompt response to patients.

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**(11) *Response to Argument***

Appellant has argued that in Beard et al the closure is crimped to the container and not ultrasonically welded. Welter shows two pieces welded ultrasonically to each other to assure a uniform distribution of amplitude of vibration and a resultant uniform bond (see column 1, lines 43-48) which is an obvious substitution to attach a metal closure to a metal container which is well within the level of ordinary skill in the art.

Appellant alleges that the claimed limitation of one of the flanges greater in width than the other flanges is not shown. Beard et al show the cup member having a wider flange than the container flange and are joined by crimping in the conventional manner (see column 3, lines 24-27).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on

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combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

*6/13/00*  
PHILIPPE DERAKSHANI  
PATENT EXAMINER  
ART UNIT 314

PD  
June 13, 2000

*KPS 6/13/00*  
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